

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR00-4043-MWB

ORDER

RICHARD LOFTON,

Defendant.

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This matter comes before the Court on defendant Richard Lofton's motion for judgment of acquittal or in the alternative for a new trial. After careful consideration of the parties' written and oral arguments, as well as the relevant case law, defendant's motions are denied.

**I. BACKGROUND**

On December 7, 2000, the defendant, Richard Lofton, was convicted of (1) possessing methamphetamine with intent to distribute (Count I), (2) possessing marijuana with intent to distribute (Count II), and (3) knowingly using and carrying a firearm during and in relation to, or possessing a firearm in furtherance of a drug trafficking crime. Mr. Espinosa, Lofton's co-defendant pleaded guilty to Counts I and II of the indictment

and went to trial on Count III, the firearms charge. Espinosa was found guilty of aiding and abetting defendant Lofton, on the firearms charge.

After the trial, Lofton filed a motion for judgment of acquittal pursuant to Federal Rule of Civil Procedure 29, and a motion for a new trial pursuant to Federal Rule of Civil Procedure 33. Both parties submitted written briefs and hearings were held.

## **II. STANDARDS**

### **A. Motion for Judgment of Acquittal**

Federal Rule of Criminal Procedure 29 provides in pertinent part:

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

Fed. R. Crim. P. 29(a). In the Eighth Circuit, the Baker-Burks line of authority restrains the courts' ability to overturn jury verdicts. United States v. Baker, 98 F.3d 330, 338 (8th Cir. 1996); United States v. Burks, 934 F.2d 148, 151 (8th Cir.

1991). See also United States v. Gomez, 165 F.3d 650, 654 (8th Cir. 1999) (observing that the jury's verdict must be upheld if there is an interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt).

In considering a motion for judgment of acquittal based on the sufficiency of the evidence, the Court must "view the evidence in the light most favorable to the government, giving it the benefit of all reasonable inferences." United States v. Causor-Serrato, 234 F.3d 384, 387-88 (8th Cir. 2000); United States v. Basile, 109 F.3d 1304, 1310 (8th Cir.), United States v. Vig, 167 F.3d 443, 447 (8th Cir. 1999) (observing that "[w]e review the district court's denial of a motion for judgment of acquittal based on the sufficiency of the evidence by viewing the evidence in the light most favorable to the verdict."). Furthermore, "[t]his standard applies even when the conviction rests entirely on circumstantial evidence." United States v. Davis, 103 F.3d 660, 667 (8th Cir. 1996), cert. denied, 520 U.S. 1258 (1997). A jury verdict should not be overturned lightly. United States v. Washington, 197 F.3d 1214, 1217 (8th Cir. 2000); United States v. Tucker, 169 F.3d 1115, 1116 (8th Cir.

1999).

In addition to allowing a conviction to be based on circumstantial and/or direct evidence, the Eighth Circuit Court of Appeals has instructed that "[t]he evidence need not exclude every reasonable hypothesis except guilt." United States v. Baker, 98 F.3d 330, 338 (8th Cir. 1996), cert. denied, 520 U.S. 1179 (1997). The Court can neither weigh the evidence nor assess the credibility of the witnesses; these tasks belong exclusively to the jury. United States v. Wells, 63 F.3d 745, 752 (8th Cir. 1995). When considering a judgment of acquittal motion, the Court must keep in mind that it is the jury's job to judge the credibility of witnesses and to resolve contradictions in evidence. United States v. Ireland, 62 F.3d 227, 230 (8th Cir. 1995).

#### **B. Motion for New Trial**

Federal Rule of Criminal Procedure 33 provides in relevant part as follows:

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice.

Fed. R. Crim. P. 33.

As the United States Court of Appeals for the Eighth Circuit

has explained:

When a motion for a new trial is made on the ground that the verdict is contrary to the weight of the evidence, the issues are far different from those raised by a motion for judgment of acquittal. The question is not whether the defendant should be acquitted outright, but only whether he should have a new trial . . . [the court] may weigh the evidence and in so doing evaluate for itself the credibility of the witnesses.

United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir. 1980).

"The Court will only set aside the verdict if the evidence weighs heavily enough against the verdict that a miscarriage of justice may have occurred." United States v. Rodriguez, 812 F.2d 414, 417 (8th Cir. 1987). The authority to grant new trials, however, "should be used sparingly and with caution."

United States v. Lincoln, 630 F.2d 1313, 1319

(8th Cir. 1980).

Having examined the appropriate standards of review, the Court turns now to its consideration of the defendant's motions.

### **III. ARGUMENTS & ANALYSIS**

In defendant's pleading entitled "Amendment To Motion For New Trial" (Docket #122), the focus of defendant's written argument pertains to his claim of ineffective assistance of trial counsel. Just prior to the last hearing held in this

case, the defendant withdrew his ineffective assistance of counsel claim apparently recognizing that such a claim is more appropriate in post-trial proceedings. Therefore, this Court will not rule on the issue of ineffective assistance of counsel. That issue has been withdrawn and is now moot.

In support of his motions, the defendant argues that there are inconsistencies between the trial testimony of Officer Sassman, and the police reports related to the traffic stop and arrest. Specifically, the defendant asks the Court to recognize "inconsistencies" relative to the smell of marijuana in the vehicle. The defendant also argues that the fact that the police reports may not have been typed up until four hours after the actual traffic stop took place, is a good reason for the Court to discredit the accuracy of those reports and the testimony of the police officers. These "inconsistencies" were fully challenged on cross examination, certainly made known to and considered by the jury and found not to be persuasive. This Court agrees.

To further support his claim that the police officers testified untruthfully, the defendant points to the testimony of Officer Hansen who testified that he was informed by Lofton that

he had made the trip from Colorado to Sioux City because his wife was moody due to her being pregnant. (Tr. at 69). The defendant argues that Officer Hansen lied because his wife was not pregnant at the time of his arrest.

The Court is not persuaded that the mistaken statement by Officer Hansen in relation to the defendant's wife, is significant. This was clearly a misunderstanding and it does not persuade the Court that Officer Hansen's testimony should be discredited. This Court has carefully reviewed all of the police reports and is persuaded that there is no evidence of any significant inconsistency between the police reports and the testimony given at the trial by the police officers.

The defendant further points out that in final jury instruction #13A and 14, the jury was given the opportunity to find his co-defendant, Espinosa, guilty of either (1) using, carrying or possessing a firearm in connection with a drug trafficking offense or (2) aiding and abetting defendant Lofton in using, carrying or possessing a firearm in connection with a drug trafficking offense. The defendant argues that giving this choice to the jury with regard to defendant Espinosa was prejudicial to him.

The Court has reviewed jury instructions 13A and 14 and concludes that they were not prejudicial to defendant Lofton. The fact that the jury had the choice of finding that defendant Espinosa either personally committed the firearm offense, or was guilty of aiding and abetting Lofton in relation to the firearm offense, did not prejudice Lofton. Lofton had immediately admitted that the gun was his. Apparently, the Government chose not to charge Lofton with aiding and abetting Espinosa on the firearm charge because of Lofton's admission as to owning the gun, it apparently felt there was enough evidence to convict Lofton as the principle as to the gun count.

The jury had a clear choice as to Lofton's responsibility on the firearm charge in #3 of the verdict form. That choice was guilty or not guilty and they found Lofton guilty. The fact that later in the verdict form the jury had to determine if Espinosa was personally responsible, or was responsible because he aided and abetted, without Lofton's name being mentioned, was not prejudicial to Lofton.

After careful consideration of all of the evidence and the parties' arguments, this Court is persuaded that when viewing the evidence in the light most favorable to the Government,

there was sufficient evidence for a jury to find the defendant guilty of (1) possessing methamphetamine with intent to distribute, (2) possessing marijuana with intent to distribute, and (3) knowingly using and carrying a firearm during and in relation to, or possessing a firearm in furtherance of a drug trafficking crime. As stated above, a jury verdict should not be overturned lightly. United States v. Washington, 197 F.3d 1214, 1217 (8th Cir. 2000); United States v. Tucker, 169 F.3d 1115, 1116 (8th Cir. 1999). Furthermore, this Court is not persuaded that a substantial miscarriage of justice occurred here. Defendant's motions for judgment of acquittal or in the alternative for a new trial are both denied. Defendant's motion for relief on his claim of ineffective assistance of counsel was withdrawn and is denied as moot.

**IT IS SO ORDERED.**

**DATED** this \_\_\_\_ day of December, 2001.

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Donald E. O'Brien, Senior Judge  
United States District Court  
Northern District of Iowa

